

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Inquiry Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
And Timely Fashion, and Possible Steps )  
To Accelerate Such Deployment )  
Pursuant to Section 706 of the )  
Telecommunications Act of 1996 )

CC Docket No. 98-146

COMMENTS OF  
e.spire COMMUNICATIONS, INC.

e.spire Communications, Inc. ("e.spire"),<sup>1</sup> by its attorneys, hereby submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Inquiry ("NOI") in the above-captioned docket.<sup>2</sup> e.spire and its peers in the competitive local exchange carrier ("CLEC") industry have been, and likely will continue to be, leaders in the deployment of advanced telecommunications technologies and infrastructure. e.spire commends the Commission for the work it already has done with respect to ensuring the timely deployment of advanced telecommunications capability and welcomes this opportunity to submit comments in response to the Commission's NOI.

<sup>1</sup> e.spire is the new corporate name for the company formerly known as American Communications Services, Inc. or ACSI.

<sup>2</sup> Notice of Inquiry, CC Docket No. 98-146 (rel. Aug. 7, 1998); *see also Common Carrier Bureau Establishes Revised Pleading Cycle for Comments in Section 706 Notice of Inquiry, FCC 98-187, and Deployment of Advanced Telecommunications Notice of Proposed Rulemaking, FCC 98-188*, CC Docket Nos. 98-146 and 98-147, respectively (rel. Aug. 12, 1998).

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## Introduction

e.spire believes and is hopeful that much of the hard work required by section 706 will be addressed in the context of the rulemaking that the Commission is conducting concurrently with this NOI. This, however, does not diminish the importance of this statutorily mandated inquiry. Accordingly, e.spire addresses several significant issues raised by the NOI and stands ready to participate as this inquiry moves forward.

Most significantly, e.spire urges the Commission to adopt a “section 706” approach that prudently is focused on the deployment of facilities and infrastructure necessary to bring advanced telecommunications services to all Americans. The task at hand is an important one and it would be unfortunate to see the term “advanced telecommunications *capability*” clouded or overcome by a debate centered on specific technologies, services or content. The goal of the Commission’s inquiry should be to ensure that its approach is technology neutral and flexible enough so that it is not soon rendered cumbersome or obsolete by technological advances and associated network evolution. Moreover, the Commission’s interpretation of advanced telecommunications capability and related terms must guard against regulatory gamesmanship. Already, section 706 has been invoked by several Bell operating companies (“BOCs”) seeking to extend their local monopolies to the market for advanced services. As Congress recognized in passing the 1996 Act, consumers stand to gain the most from the development of competitive markets and not the perpetuation or extension of local service monopolies. As e.spire has maintained throughout its multiple section 706 filings, full implementation and certain enforcement of the pro-competitive provisions of sections 251 and 252 offer the best chance to promote and maximize the widespread deployment of advanced telecommunications capability sought by Congress in section 706.

**I. The Term “Advanced Telecommunications Capability”  
Should Be Interpreted in a Way That Is Dynamic and Technology Neutral**

As part of its required inquiry under section 706, the Commission thoughtfully has sought comment on the meaning of various terms and phrases incorporated into the statute.<sup>3</sup> Most fundamental of all the statutory terms at issue obviously is the term “advanced telecommunications capability”. First and foremost, e.spire believes that this term – and other related terms in the definition supplied by Congress – must be interpreted in a way that is dynamic *and* technology neutral.<sup>4</sup> In other words, the Commission’s interpretation of this and related terms must be sufficiently broad and generic so that they do not favor one technology over another. The Commission also must ensure that its interpretation is not susceptible to being rapidly overcome by technology and network evolution. e.spire believes that such an approach is essential if the Commission is to remain true to the definition of advanced telecommunications capability supplied in the statute<sup>5</sup> and to Congress’ broader purpose of ensuring that advanced telecommunications capability – or the ability to *access* advanced telecommunications services – is extended in a timely manner to all Americans.

To achieve the necessary flexibility, the Commission’s focus must be on the facilities and infrastructure used to deliver high bandwidth data, voice and video services. e.spire notes that the Commission wisely distinguishes between advanced telecommunications capability and the

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<sup>3</sup> NOI, ¶¶ 13-17.

<sup>4</sup> e.spire supports the Commission’s conclusion that its role in this NOI and the related rulemaking “is not to pick winners or losers or select the ‘best’ technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation and meeting the needs of consumers.” *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, ¶ 2 (rel. Aug. 7, 1998) (“First Section 706 Order and NPRM”).

<sup>5</sup> Section 706(c)(1) (47 U.S.C. § 157 note).

services derived therefrom.<sup>6</sup> Nevertheless, the Commission posits “whether advanced capability includes content, such as web pages, in addition to the ability to reach content.”<sup>7</sup> Later in the NOI, as if to suggest a foregone conclusion, the Commission refers to content, in addition to backbone and the last mile, as one of the elements of advanced telecommunications capability.<sup>8</sup> Section 706, however, speaks only of advanced telecommunications *capability* and neither invites nor instructs the Commission to take on the role of ensuring the universal availability of all or even certain advanced telecommunications services (not to mention *content* reached through various services such as Internet access) made possible through the timely extension of broadband infrastructure throughout the country. Surely, Congress did not intend for the Commission to put itself in the impossible position of deciding which content should – or even must – be delivered pursuant to section 706.

Thus, the simple answer to the Commission’s query is that the term advanced telecommunications capability does not include content. Even if there is such a thing as advanced telecommunications content, the focus of section 706 is elsewhere. Accordingly, the Commission should resist the temptation to expand its inquiry beyond the essential issue of whether *facilities and infrastructure* are being deployed so that Americans will have *access* to advanced services in a timely manner.

Moving from an over-inclusive proposal to one that is under-inclusive, e.spire also rejects the proposition that the term advanced telecommunications capability somehow excludes access to one-way telecommunications services.<sup>9</sup> Simply put, there is no evidence that Congress’

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<sup>6</sup> NOI, at n.8.

<sup>7</sup> *Id.* ¶ 16.

<sup>8</sup> *Id.* ¶ 61.

<sup>9</sup> *Id.* ¶ 16.

incorporation of the words “originate and receive” in its definition of advanced telecommunications capability was intended to exclude access to one-way telecommunications. Rather, it is far more plausible to read this language as an indication that Congress was determined to ensure access to interactive technologies such as the Internet and wanted to make clear that its section 706 mandate extended *beyond* one-way telecommunications such as high-speed, broadband video delivery. Ironically, any reading of the definition of advanced telecommunications services that excludes one-way telecommunications could exclude Internet access services, even though the statutory definition suggests that Congress intended to ensure that section 706 was expansive enough to include access to interactive technologies such as the Internet. The imposition of a one-way exclusion also would run the risk of excluding new technologies that could be used to convert traditional one-way technologies, such as paging, into two-way technologies, and, in so doing, would directly contradict the definition supplied by Congress.

## **II. Competitive Markets Are Responding Efficiently – There Is No Crisis In the Availability of Backbone Facilities**

Pursuant to section 706, and no doubt, to some degree, in response to the Bell operating companies’ section 706 petitions in which they painted a horrifying picture of a nation hobbled by broadband backbone congestion and starving for additional capacity, the Commission seeks comment on the availability of high-speed capacity serving both intraLATA and interLATA routes.<sup>10</sup> e.spire submits that competitive markets are responding efficiently to the developing need for additional backbone capacity. Simply put, there is no national “bandwidth famine”, and

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<sup>10</sup> *Id.* ¶¶ 25, 33.

to the extent that a shortage or absence of any high-speed backbone facilities exists within specific regions of the country they have not become or been made evident.

e.spire's position is supported by the Commission's recently released Fiber Deployment Update.<sup>11</sup> The Fiber Deployment Update confirms that the all sectors of the telecommunications industry are deploying substantial amounts of new fiber and are expanding the capacity of existing fiber backbone capacity through the deployment of advanced electronics. Significantly, the Update notes with regard to competitive access providers ("CAPs"), such as e.spire, that CAPs "significantly expanded their fiber deployment in 1997" and that "the rate of overall fiber growth for CAPs is quite dynamic and typically has exceeded 50 percent annually over the past several years."<sup>12</sup>

e.spire submits that the industry will continue to meet the growing demand for high-speed backbone facilities – even in rural and specific geographic areas where demand for such facilities has been slower to develop. Indeed, evidence submitted in response to Bell Atlantic's spurious "emergency petition" to address "West Virginia's bandwidth crisis" demonstrates that claims of a bandwidth famine in rural areas of the nation are likely to be grossly overstated, at best.<sup>13</sup> As demonstrated by the record in that proceeding, Bell Atlantic's petition was nothing more than another ploy aimed at circumventing the section 271 interLATA entry requirements. Several companies have deployed or are in the process of deploying high-speed backbone facilities to

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<sup>11</sup> Jonathan Kraushaar, *Fiber Deployment Update – End of Year 1997* (rel. Sept. 4, 1998) (*"Fiber Deployment Update"*).

<sup>12</sup> *Id.* at 2.

<sup>13</sup> See, e.g., Reply Comments of Intermedia Communications, Inc., *In the Matter of Emergency Petition of Bell Atlantic-West Virginia for Authorization to End West Virginia's Bandwidth Crisis*, CC Docket No. 98-11 (filed Aug. 17, 1998) (Bell Atlantic filed its "emergency petition" on July 22, 1998).

serve rural West Virginians.<sup>14</sup> Significantly, the record that developed as a result of Bell Atlantic's frivolous petition suggests that there should be a strong (but rebuttable) presumption that the market has and will continue to meet the high-speed backbone needs of all Americans, including those that reside in rural areas.

### **III. e.spire and Other CLECs Are Leading the Way In Deploying Advanced Telecommunications Facilities and Infrastructure**

e.spire is one of many CLECs that are leading the way in the deployment of advanced telecommunications facilities and services. To date, e.spire has raised over \$1 billion in the capital markets to support its effort to deploy advanced fiber-ring technology, as well as, asynchronous transfer mode ("ATM") and frame relay high-speed backbone and data transmission technologies. Evidence in the trade press suggests that other CLECs also have been successful in raising significant amounts of capital to support their own deployment of advanced telecommunications infrastructure.

e.spire's aggressive entry into the market for advanced telecommunications services is supported by one of the most extensive deployments of data switches and fiber by any independent facilities-based CLEC. Currently, e.spire's network connects more than 70 data POPs and includes approximately 22,000 route miles of broadband backbone. Coupled with 32 local networks incorporating nearly 1,500 route miles of fiber and 17 local switches – and with additional deployment continuing at a rapid pace – e.spire currently is able to offer integrated packages of local and long distance voice and data services, as well as Internet access services, to

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<sup>14</sup> See, e.g., Comments of Helicon Corporation, CC Docket No. 98-11, at 5 (filed Aug. 10, 1998); Comments of Allegheny Communications Connect, Inc., CC Docket No. 98-11, at 2 (filed Aug. 10, 1998);

end users in more than thirty markets located in twenty states. e.spire's advanced data and Internet access services are available on an even wider basis.<sup>15</sup>

Notably, the efforts of e.spire and its CLEC peers have spurred incumbents to make tremendous investments in advanced telecommunications infrastructure as they have begun to feel the effects of competition that is starting to take hold in urban and suburban business corridors. As demonstrated by the ALTS section 706 petition and the comments and replies filed in response thereto, it is competition – and not relief from regulation and statutes that were designed to facilitate the transition from monopoly to competitive markets – that will spur innovation and additional deployment of advanced telecommunications capability in all regions of the country.

Thus, e.spire maintains its position that ensuring full implementation of the pro-competitive provisions of sections 251 and 252 is the best policy the Commission can adopt to ensure and maximize the efficient deployment of advanced telecommunications capability to all Americans. e.spire commends the Commission for the good work it already has done on this issue in its first section 706 order. Importantly, in that order, the Commission made clear that incumbent local exchange carrier (“ILEC”) data facilities and services are subject to the interconnection, unbundling and resale provisions of section 251.<sup>16</sup> Nevertheless, at least U S West continues to ignore the Commission's pronouncements and, with the intent to secure a

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<sup>15</sup> While e.spire maintains its focus on small to medium-sized business customers, it is hopeful that appropriate collocation reform being considered in the section 706 rulemaking, combined with the eventual establishment of true cost-based pricing for loops and related unbundled network elements, may at some point make its offering of residential services feasible.

<sup>16</sup> First Section 706 Order and NPRM, ¶¶ 32, 46, 52-53, 54, 57-58, 60-61, 64.



monopoly in the market for advanced data services, seems determined to litigate the matter on a state-by-state basis.<sup>17</sup>

In light of the intransigence demonstrated in this case by U S West, e.spire submits that vigilant enforcement of the pro-competitive provisions of sections 251 and 252 will be essential to ensuring that the goals of section 706 are met as well. For now, it remains clear that ILEC interconnection, unbundling and resale policies continue to hamstring the ability of e.spire and other CLECs to deploy advanced services to consumers. The expense, delay and uncertainty currently involved with loop provisioning and collocation, the unavailability of transport options, and the unwillingness or inability of ILECs to meet nondiscriminatory provisioning intervals are the most formidable of the ILEC roadblocks that need to be addressed. e.spire fully expects that the Commission will have a clear opportunity to address most of these concerns in its ongoing section 706 rulemaking. However, because ILEC intransigence produces the greatest drag on the deployment of advanced telecommunications services, the effects of such intransigence also should be considered in the Commission's report that results from this NOI proceeding.

## **Conclusion**

e.spire recognizes that the Commission's task in carrying out its section 706 mandate is an important one and it appreciates the opportunity to participate in this inquiry as well as in the related section 706 rulemaking. For the foregoing reasons, e.spire respectfully encourages the Commission to keep its inquiry focused on the deployment of advanced telecommunications *capability* and to adopt broad and flexible interpretations that accommodate all technologies and do not favor one over another. The Commission also should remain mindful that the best way to

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<sup>17</sup> e.spire currently is arbitrating frame relay interconnection with U S West in Arizona, Colorado and New Mexico.


ensure the most widespread and timely deployment of such advanced telecommunications capability is to fully implement and enforce the pro-competitive provisions of sections 251 and 252.

Respectfully submitted,

**e.spire COMMUNICATIONS, INC.**

Riley M. Murphy  
Executive Vice President  
and General Counsel  
Charles H.N. Kallenbach  
Vice President – Regulatory  
Affairs  
e.spire COMMUNICATIONS, INC.  
133 National Business Parkway  
Suite 200  
Annapolis Junction, MD 20701

(301) 361-4295

By:   
Brad E. Mutschelknaus  
John J. Heitmann  
KELLY DRYE & WARREN LLP  
1200 19th Street, N.W.  
Fifth Floor  
Washington, D.C. 20036

(202) 955-9600

Its Attorneys

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